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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000196

SIPDIS

DEPARTMENT ALSO FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [AM](#) [TU](#)
SUBJECT: TURKISH MFA'S CONCERNS OVER ARMENIAN
CONSTITUTIONAL COURT DECISION

REF: A. ANKARA 28
[1](#)B. 09 ANKARA 1569
[1](#)C. YEREVAN 22

Classified By: DCM Doug Silliman for reasons 1.4(b,d)

[1](#)1. (C) Summary: On February 3 MFA DG for Research and Intelligence Aydin Sezgin spoke with the DCM about Turkish concerns over the Armenian Constitutional Court decision. Sezgin focused on two main points. First, he argued that the court decision requires the GOAM to engage only in a sterile polemical discussion of the events of 1915 in the historical sub-commission rather than the flexible dialogue the Turks thought had been orally agreed and thus removing all "creative ambiguity" from the protocols. Second, that the court decision reaffirms that Armenia does not accept the Treaty of Kars and Moscow, putting Armenian intentions over Turkish borders into question. On February 3, CHP MP and former MFA Undersecretary Sukru Elekdag added to this argument, asserting that the rejection of the Treaty of Kars was significant because it contains a provision supposedly absolving Turkey of responsibility for events of 1915, and a provision allowing Turkey to provide security to Nakhichevan. U/S Sinirlioglu, Sezgin, and the MFA's Acting Legal Advisor will meet with the Swiss in Bern February 5 and want meetings in Washington February 15-16. End Summary.

MFA: RULING TIES GOAM'S HANDS...

[1](#)2. (C) Sezgin told the DCM that the Armenian Constitutional Court decision creates a legal link between the Armenian Constitution, Declaration of Independence and the Turkey-Armenia protocols. This link, combined with other statements from Yerevan, ties Armenian hands in implementing the historical commission in the way Turkey expected. The link also removes the "creative ambiguity" initially present and that is critical to the GOT selling the protocols to the public. According to Sezgin, the protocols initially left out a direct reference to the events of 1915 to avoid political difficulties for Armenia, and the ambiguity allowed Turkey and the Turkish public to keep the idea that both parties could come to the commission to openly discuss historical differences over the events of 1915. The court decision, he asserted, directs the GOAM only to seek recognition of genocide and thereby 1) casts doubt on the most important point of the protocols to Turkey and 2) detracts from the GOT's biggest selling point of the protocols to the public.

13. (C) The second issue for Turkey is the question of borders and how the court decision affects them. Sezgin said the decision reaffirms Article 6 of the RA Constitution, ruling out the Kars and Moscow treaties as "relevant treaties" per the protocols because they do not apply to Armenia. Without these treaties, Sezgin argued there is no formal recognition of the border by Armenia. Sezgin said Turkey cannot separate these legal concerns from their political consequences since legal issues such as border treaties are very easily translated into political obstacles in the Parliament and public opinion.

14. (C) Adding to the argument, Sukru Elekdag, current CHP member of Parliament and former MFA undersecretary, told the Ambassador on February 3 the real problem with the court decision is not the border issue, but that Foreign Minister Davutoglu presented the protocols to Parliament with the argument that through signing them, Armenia acknowledged the Kars and Moscow treaties. This is important not because it confirms the borders -- he does not believe the court decision demonstrates non-recognition of the borders -- but because article 15 of the Treaty of Kars gives Turkey (and the former Soviet Republics) amnesty for "crimes and offenses" committed during the "war on the Caucasian front." This purportedly absolves Turkey of responsibility for the events of 1915. Elekdag also asserted that the Treaty of Kars gives Turkey a security guarantee for Nakhichevan, which they used when Armenia "invaded" Nakhichevan in 1992.

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GOT LOOKING FOR A WAY FORWARD

15. (C) Despite these concerns, Sezgin said the GOT has no intention of withdrawing from the protocols; "we are looking to be convinced." The GOT is "embarrassed" (politically) by this latest development, however, and needs to find a way to address both its own and the public's fears of what the court decision could mean for Turkey and the protocols. Sezgin said they will formally present their arguments first to the Swiss, and then to the U.S. during meetings in both capitals in the coming weeks.

COMMENT

16. (C) Most of these allegations have clear counter-arguments. On the issue of the events of 1915, although Armenia may indeed come to the historical commission with its own point of view on what actually took place, so too will Turkey. The protocols do not stipulate that either side needs to give up their own positions, rather that they come to the table and participate in a discussion and investigation of the historical events, which both sides have agreed to do. The Armenian Constitutional Court ruling approved the protocols, and thus Armenian participation in such a commission. On the question of borders, the protocols do not specifically define "relevant treaties" as only those ratified by both countries, it only indicates that they are treaties that exist and are related to the border. Furthermore, the references to "the existing border" in the court decision, and "the common border" in the protocols, which Armenia signed, indicate that Armenia recognizes a pre-existing border. As colleagues in Yerevan have also pointed out, Armenian membership in regional and international organizations required that it recognize neighbors', including Turkey's, borders. The fastest way for Turkey to resolve any doubts over the borders would be to open them.

Jeffrey

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